



November 16, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR99-3267

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129914.

The Travis County Sheriff's Office (the "TCSO") received a request for records pertaining to an incident occurring in the Travis County Correctional Complex in which an inmate was allegedly injured by county employees. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The TCSO must meet both prongs of this test for information to be excepted under section 552.103(a).

You explain that the TCSO has been named a defendant in a pending civil rights action involving the incident. *LaGrange v. Galloway, et al.*, No. A-99-CA-462 (W.D. Tex. filed Aug. 10, 1999). Moreover, you have submitted a letter written by the opposing party in which he states his intent to file an appeal should the district court dismiss the civil rights petition. The opposing party also states in the submitted letter his intent to litigate the matter further by filing a tort action against the TCSO pursuant to the Texas Tort Claims Act,

Civ. Prac. & Rem. Code. Therefore, we find that you have shown that litigation involving the TCSO in connection with the incident is pending, and that further⁹ litigation is reasonably anticipated.

We have reviewed the submitted documents and believe that while most are related to the pending and anticipated litigation, some documents are not. Thus, the TCSO may withhold the submitted documents from disclosure under section 552.103, except for the documents that we have marked. The marked documents must be released because they do not relate to the litigation, and therefore, are not excepted from public disclosure under section 552.103.

Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no interest under section 552.103 exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We note that the opposing party has had access to some of the submitted documents. Thus, these documents are not excepted by section 552.103 and must be released to the requestor. We have marked these documents as well. We also note that the applicability of section 552.103 ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/NC

Ref: ID# 129914

Encl. Submitted documents

cc: Mr. Ricardo LaGrange
4700 Blue Mound Road
Fort Worth, Texas 76106
(w/o enclosures)